IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.Rev.Pet.No. 263 of 1997()

CRRP.78/1995 of SESSIONS COURT, ALAPPUZHA
CC.195/1992 of JUDL.MAGISTRATE OF FIRST CLASS, RAMANKARI

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REVN. PETITIONER: APPELLANT/ACCUSED

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1. CHACKO, S/O.KURIAKO
   MUUTTUNGAL VEEDU
   THEKKEMURI, NEDUMUDI VILLAGE.

2. MATHEW, S/O.CHACKO
   ANCHUVELITHARA VEEDU
   THEKKEMURI, NEDUMUDI VILLAGE.

3. THANKAPPAN, S/O.KOCHIKKA
   ETTILCHIRA VEEDU, NADUBHAGOM MURI
   NEDUMUDI VILLAGE.

BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

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1. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

2. PEETHAMBARAN, S/O.KESAVAN
   ETTILCHIRA VEEDU, NADUBHAGOM MURI
   NEDUMUDI VILLAGE, ALAPPUZHA DISTRICT.

BY PUBLIC PROSECUTOR SRI.
SRI.P.U.SHAILAJAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.263 of 1997

Dated this the 22nd day of June, 2007

O R D E R

The revision petitioners are the accused, three in number, in C.C.No.195/92 in the court of JFCM, Ramankari.

2. It is submitted that the second revision petitioner is no more. The revision petitioners have sought for setting aside the order of the JFCM, acquitting the accused. It is the contention that the appellate court has interfered in the order of the trial court exceeding the confines of the revisional jurisdiction.

3. The prosecution case is that the accused on account of enmity towards PW1 with respect to a boundary dispute, committed trespass and intimidated him and A1 with his hand tapped under the chin and beat on his right shoulder, A2 with his hand beat at the back of PW1 and A3with the handle of a chopper hit on the back of PW1 causing bodily pain and put him under fear of death by brandishing the said chopper.

4. The evidence adduced in the matter consisted the

testimony of PWs' 1 to 5 and Exts. P1 to P4. The defence examined are Dws' 1 and 2. PW1 is the complainant himself. PW2 is the Constable who record the FIS and PW2 is the Sub Inspector who investigated and PWs' 4 and 5 are the independent witnesses. PW6 is the doctor who examined and issued Ext. P4 wound certificate.

5. The trial court on a consideration of the evidence adduced found that the evidence of PWs' 4 and 5, whose residences are admittedly at a distance of 3 km. away from the scene of occurrence, have not mentioned reliable reasons for their presence at the spot. It is their version is that PW4 had purchased a “Poovarassu” tree standing at the boundary of the property of PW1 and PW5 just accompanied him. There was dispute, a boundary dispute as well. It is also noted that there was no external injuries as such but only complaint of pain as noted in the wound certificate. The trial court has also observed that the alleged criminal trespass was not mentioned in Ext. P1 FIS. The failure to examine any of the persons who were residing nearby was also taken note of. It was also noted that A1, A3 and PW1 belonged to different political parties. The

appellate court is of the opinion that there is nothing to disbelieve the opinion of PW1 and that it is possible that PW4 and PW5 chance witnesses can be at the spot. I find that it is also evidenced that A1 was also admitted in the hospital. I find that as per wound certificate, PW1 was examined by the doctor at 4 p.m But the incident has taken place at 9 am. The FI statement was rendered at 1.30 p.m. The FI statement reached the court on the next day at 10.30 am. There was no external injuries to PW1. PWs' 4 and 5 are the only witnesses to the incident. I find that the conclusion arrived by the trial court is possible one. The revisional jurisdiction against the acquittal is to be exercised only in exceptional cases wherein it is patent that the findings are perverse and are supported by no reason etc. In the circumstances, I find that the interference by the Sessions Judge in the order of the trial court was not called for. The order of the appellate court in revision is set aside.

The revision petition is allowed.

K.R.UDAYABHANU,
JUDGE

csl